No. 80-1044

IN THE SUPREME COURT OF THE
UNITED STATES

1980-81 Term

In re WILLIAM L. FISHER,
individually, and as
administrator of the
estate of Therese deL.
Fisher, deceased, etc.

On Writ, alternatively, of Prohibition,
Mandamus, Superintending Control or
Common Law Certiorari to the United
States Court of Appeals for the Sixth
Circuit

PETITIONER'S REPLY

TO INSURER'S RESPONSE

WILLIAM L. FISHER, Esq.
Attorney at Law
Petitioner, in pro per
1051 Naughton St. #202
Troy, Michigan 48084
(313) 689-8550

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PETITIONER'S REPLY TO INSURER'S RESPONSE

Now comes petitioner and, in reply to insurer's response, shows unto the Supreme Court as follows:

Said response[1] is predicated upon a supposed showing of jurisdiction in the

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[1]The Rules of the Supreme Court of the United States pertaining to procedure on certiorari say:

> "The order may be a summary disposition on the merits." Rule 23.1

Petitioner doesn't know how this could be possible because issues on the merits haven't been presented as yet via facts, questions presented and briefs.

Insurer's response presents a "Statement of the Case" as though the merits were being decided. Its allusion to Petitioner's lack of "collision" coverage is a deliberate dodge or cover-up because it knows its insured (Petitioner) could never purchase "collision" coverage for a non-owned vehicle belonging to a third party.

Insurer is dishonest to the U.S. Supreme Court in citing an alleged exclusion to public liability coverage because it: (1) contravenes the law and public policy of Michigan; and (2) pertains to "property" other than an automobile and is therefore inapplicable.

On the merits, insurer will be found by the U.S. Supreme Court to be a cheat which was aided and abetted in its cheating by the lower federal courts.

lower federal courts. Insurer assures the Supreme Court of such jurisdiction without disclosing that the Sixth Circuit refused to decide such issue.

The only comment insurer makes about the Court of Appeals' decision on rehearing is on page 2 of its response (last three lines) which, when corrected, reads:

> "His (Petitioner's) subsequent petition for rehearing en banc based on jurisdictional grounds was denied by the Court of Appeals without deciding such grounds." (Emphasis supplied).

Insurer's assurance to the Supreme Court of jurisdiction in the lower federal courts is both a bit ludicrous considering that they themselves (the lower federal courts) give no such assurance and much like the insurance it sells -- untrustworthy. Insurer harps an old tune found in some of the lower federal courts' singsongs about said Section 1332, to

wit: that its purpose is limited to correcting overcrowding of the federal courts in Louisiana and Wisconsin only.

The fourteen year old should-be-graveyarded White case and cases spawned thereby are relied upon by insurer to thus abnormally limit the proper scope and beneficial effect of said Section 1332.

The Supreme Court should use the instant case to give the proper intrepretation of said Section 1332 and put to rest for good all pro-diversity thinking in the federal courts.

Even the Supreme Court has not been as anti-diversity in its thinking as said Section 1332 warrants so that it is little wonder that there is so much pro-diversity thinking in the lower federal courts.

For example, while this court (majority opinion, that is) was "right on" in

Owen Equipment & Erection Co. v Kroger 434 US 1008, its pro-diversity thinking in Provident Tradesmen Bank & Trust Co. v Patterson 390 US 102 caused it to overlook the fact that a sham device was employed to "create" a fake diversity, to wit: purposeful omission of the automobile owner (whether a dispensible or indispensible party) as a defendant to fabricate a paper diversity case.

Pro-diversity reasoning in Thermtron Products v Hermansdorfer 423 US 336[2] prevented the three dissenters views from carrying the day. Even the latter failed to argue that removal of a state court matter to an overcrowded federal

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[2]In this case petitioner's counterpart sought an extraordinary writ in the Sixth Circuit but not in the Supreme Court; yet the latter issued the same. Petitioner submits that, if this court believes he should have sought a statutory certiorari, the same should issue in the same manner, i.e. without discussion and with alacrity.

court can indeed be considered "improvident" within the meaning of Section 1447(c).

In the instant case, the Supreme Court should take jurisdiction not only to right the horrendous wrong done petitioner by the lower federal courts in refusing to decide subject matter jurisdiction and ignoring, inter alia, strong public policy of Michigan, whereby to let insurer escape statutorily imposed obligations, but also to place such construction upon said Section 1332 as proposed in footnote 4 (page 34) of petitioner's petition, whereby to eliminate corporations entirely from its operation or to read it such that any corporate place of business is "principal" if the corporation is established sufficiently to be amenable to state court process. At least it should decide whether the instant removal petition is insufficient as petitioner claims, if not fraudulent, in view of the

clear words of said Section 1332 making insurer a citizen of Michigan in this case.[3]

In the instant case petitioner has amply demonstrated a clear and indisputable

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[3]Surely the court noted insurer's attempted upgrading of the bare ipse dixit it used in its removal petition to supposedly confer jurisdiction upon the federal courts.

The bare ipse dixit in its response (page 3 lines 18 and 19) reads:

> "...whose principal office and principal place of business is in the State of Nebraska." (emphasis supplied).

The bare ipse dixit in its removal petition (page 23a of petitioner's petition) reads:

> "...with its principal office and place of business in the City of Omaha, State of Nebraska..."

This bare ipse dixit made by one having no official position with insurer and without stating operative facts is a far more deficient removal petition than the one in Maryland v Soper (No. 1) 270 US 9 held "not sufficiently informing and specific to make a case for removal". In respect to the cited case, petitioner queries this court whether Justice Taft's recommendation of "more liberal use of mandamus" should not be applied to civil cases now when the quality of justice dispensed in the federal courts has reached a crisis from overcrowding.

right to the extraordinary writ prayed for though he has not specified the form it should take. Petitioner submits that it could well be prohibition to prohibit the wrongful assumption of jurisdiction by the lower federal courts or common law certiorari to bring up the whole record and dispose of the case on its merits based upon the original jurisdiction of the state court of first instance. It matters little as to the form of the writ[4] as long as it is equal to its great remedial task of preventing the grave miscarriage of justice in the instant case of the lower federal courts' "refusing to decide" the issue of subject matter jurisdiction while denying petitioner, inter alia, his damages for insurer's wrongful refusal to defend.

Petitioner is entitled to a jury

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[4] Ex parte Simon 247 US 231

trial on this issue. Deprivation of a jury trial was the basis for a mandamus from this court in Ex parte Simons, supra. The latter pales in comparison to the hurt done petitioner in the instant case. The order in Ex parte Simons, supra, was interlocutory while in the instant case it is final and entered without jurisdiction. The summary judgment against petitioner of two successive federal courts does more than deprive him of a jury trial on the issue of insurer's bad faith conduct toward its insured; it finally and forever dissolves a state court judgment against plaintiff's decedent and bars his right as administrator of the estate of plaintiff's decedent to collect said judgment filed as a claim against said estate.

If the Supreme Court not intervene to give righteous judgment in the instant case how else will be upheld the credit

of the federal judiciary?

WHEREFORE, the extraordinary writ prayed for in petitioner's petition should issue.

Respectfully submitted,

WILLIAM L. FISHER, Esq.
Petitioner in pro per
1051 Naughton St. #202
Troy, Michigan 48084
(313) 689-8550